

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
at Huntington**

**HARMON ADKINS**  
**Plaintiff,**

**v.**

**Civil Action No.: 14-C-041**  
**Judge: James H. Young, Jr.**

**CMH OF KY, INC.,**  
**misnamed as**  
**CLAYTON HOMES**  
**OF KENTUCKY INC.,**  
**and JERRY TACKETT**

**Civil Action No.: 3:14-12679**

**Defendants.**

**ANSWER OF DEFENDANT JERRY TACKETT**

**COMES NOW**, Defendant Jerry Tackett, by counsel, Jason J. Stemple, Duffield, Lovejoy, Stemple & Boggs PLLC, and in response to the Plaintiff's Complaint, states as follows:

Because of the nature of the allegations in the Complaint and the fact that no discovery has been completed to date in this matter as to the Plaintiff's claims, in order to preserve important legal rights and protections, Defendant Jerry Tackett sets forth below certain affirmative defenses which, based upon the information set forth in the Plaintiff's Complaint, he believes may apply to some or all of the claims raised therein. Defendant Jerry Tackett further reserves the right to withdraw or modify some or all of the affirmative defenses set forth below, in whole or in part, depending upon the nature of the discovery in this matter.

**FIRST DEFENSE**

1. Answering Paragraph 1 of the Complaint, Defendant Tackett admits the allegations contained therein.
2. Answering paragraph 2 of the Complaint, Defendant Tackett denies said allegations and demands strict proof thereof.

3. Answering paragraph 3 of the Complaint, Defendant Tackett admits that CMH of KY, Inc. sold a manufactured home to Plaintiff. Defendant Tackett avers that the documents speak for themselves. If a response is required, Defendant Tackett denies said allegations and requires strict proof thereof.

4. Answering paragraph 4 of the Complaint, Defendant Tackett admits that CMH of KY, Inc. sold a manufactured home to Plaintiff. Defendant Tackett avers that the documents speak for themselves. If a response is required, Defendant Tackett denies said allegations and requires strict proof thereof.

5. Answering paragraph 5 of the Complaint, Defendant Tackett denies said allegations and demands strict proof thereof.

6. Answering paragraph 6 of the Complaint, Defendant Tackett denies said allegations and demands strict proof thereof.

7. Answering paragraph 7 of the Complaint, Defendant Tackett denies said allegations and demands strict proof thereof.

A. Defendant Tackett denies said allegations and demands strict proof thereof.

B. Defendant Tackett denies said allegations and demands strict proof thereof.

C. Defendant Tackett denies said allegations and demands strict proof thereof.

### **SECOND DEFENSE**

Defendant Tackett avers that the Plaintiff is guilty of comparative negligence which caused or contributed to the alleged damages.

### **THIRD DEFENSE**

Defendant Tackett avers that the Plaintiff's claims are barred by the applicable statute of limitations, statute of repose, improper service of process, lack of personal jurisdiction, improper venue, statute of frauds, West Virginia Code Section 46A-5-101, West Virginia Uniform Commercial Code, including Chapter 46, Section 2, West Virginia Code Section 46-2-725, failure to plead fraud with particularity, waiver, estoppel, failure to join indispensable parties,

and any other matter constituting an avoidance or affirmative defense which may later be revealed in discovery.

#### **FOURTH DEFENSE**

Defendant Jerry breached no duty owed to the Plaintiffs.

#### **FIFTH DEFENSE**

The Complaint fails to state a claim against Defendant Tackett upon which relief can be granted.

#### **SIXTH DEFENSE**

The Plaintiff's damages, in whole or part, were caused by acts of others, not any actionable conduct by Defendant Tackett.

#### **SEVENTH DEFENSE**

The Plaintiff's damages related to delivery of the manufactured home, in whole or part, are subject to and limited by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 147067.

#### **EIGHTH DEFENSE**

The Plaintiff's claims are subject to a binding and mandatory arbitration clause. Accordingly, this cause of action should be dismissed, or in the alternative, the action should be stayed pending resolution of the arbitration proceeding.

#### **NINTH DEFENSE**

Defendant Jerry Tackett specifically reserves the right to assert additional affirmative defenses, Cross Claims, Counterclaims and/or Third Party Claims should discovery reveal the necessity of such action.

**TENTH DEFENSE**

Prior to filing suit, Plaintiff did not file a consumer complaint with the West Virginia Division of Labor, Manufactured Housing Construction and Safety Standards Board as required by West Virginia Code Section 21-9-11a.

**WHEREFORE**, Defendant Jerry Tackett having fully answered the Plaintiff's Complaint, demands that he be dismissed from this action WITH PREJUDICE, that Defendant Jerry Tackett be awarded further and continuing relief as justice may require.

**JERRY TACKETT  
BY COUNSEL,**

s/Jason J. Stemple  
Jason J. Stemple (W.Va. Bar No. 8883)  
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(Counsel for Defendant Jerry Tackett)

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**CERTIFICATE OF SERVICE**

I hereby certify that, on the 19th day of March, 2014, the undersigned counsel served the foregoing "**ANSWER OF DEFENDANT JERRY TACKETT**" upon counsel of record by filing the document with the Clerk of the Court for the United States District Court for the Southern District of West Virginia, Huntington Division, using the CM/ECF System, which will send notification of such filing to counsel of record as follows:

Donald R. Jarrell, Esq.  
218 North Court Street  
P.O. Box 190  
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(Counsel for Plaintiff)

s/Jason J. Stemple  
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